

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP
(954) 797-1101

SUBJECT: Quasi Judicial Hearing: Special Permit

SE 5-1-01, Schmidt, 12070 SW 22 Court, generally located at the southeast corner of SW 22 Court and SW 121 Avenue.

TITLE OF AGENDA ITEM: SE 5-1-01, Schmidt, 12070 SW 22 Court (AG)

REPORT IN BRIEF: The applicant requested an administrative non-use special permit pursuant to Land Development Code Section 12-308(B) to reduce the required rear yard setback in the AG, Agricultural District from 40 to 36 feet in order to construct a single family dwelling of approximately 3,400 square feet in size with an attached 3 car garage and swimming pool. Staff published a notice of intent to approve an administrative non-use special permit for this request, as the Code permits administrative approval of requests to reduce a required setback by no more than 10 percent of the Code requirement. However, Land Development Code Section 12-308(B)(7) requires that such a request be processed as a special permit application when staff receives letters of objection from noticed property owners. The subject site is an unusually shaped narrow lot that has more street frontage than depth. This reverse orientation creates a design challenge. Staff finds the request satisfies the criteria for granting a special permit, noting that the applicant can move the proposed location of the home forward by 2'8" to the 35' minimum setback line, thereby reducing the request for a deviation from 4' to 1'4".

PREVIOUS ACTIONS: None

CONCURRENCES:

1. The Planning and Zoning Board reached a split decision on a recommendation for approval of the applicant's request (motion carried 2-2, May 23, 2001, Mr. Stahl and Mr. Bender dissenting).
2. The Planning and Zoning Board recommended approval subject to staff's recommendations (motion carried 4-0, May 23, 2001).

FISCAL IMPACT: None

RECOMMENDATION(S): Motion to approve subject to the applicant moving the dwelling forward 2'8" so that the reduction of the rear setback is the minimum needed at 38'8".

Attachment(s): Letters of objection, Survey, Land Use Map, Subject Site Map, Aerial

Application #: SE 5-1-01

Revisions:

Exhibit "A"

Original Report Date: 6/1/01

**TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation**

APPLICANT INFORMATION

Owner :

Name: Justin Schmidt
Address: 11920 SW 22 Court
City: Davie, FL 33325
Phone: (954)472-5508

Petitioner:

Name: Celia Schmidt
Address: 11920 SW 22 Court
City: Davie, FL 33325
Phone: (954)472-5508

BACKGROUND INFORMATION

Date of Notification: May 16, 2001 **Number of Notifications:** 27

Application History: No deferrals have been requested.

Application Request: Special Permit pursuant to Section 12-308(B)(7) of the Land Development Code **FROM:** Section 12-81A of the Land Development Code, which requires a minimum rear yard setback of 40 feet within the AG, Agricultural District, **TO:** reduce the required rear yard setback from 40 feet to 36 feet.

This Special Permit is required because the Town's published Notice of Intent to approve an administrative decision for non-use special permit ASP 4-2-01 received letters of objection from adjacent property owners. Administrative non-use special permits allow staff to approve limited minor deviations from the Code. Code Section 12-308(B)(7) requires that, when adjacent property owners object to an administrative non-use special permit, it be processed as a standard special permit.

Address/Location: 12070 SW 22 Court/Generally located at the southeast corner of SW 22 Court and SW 121 Avenue.

Future Land Use Plan Designation: Residential (1 DU/Acre)

Zoning: AG, Agricultural District

Existing Use: Vacant

Proposed Use: Single family dwelling with an attached 3 car garage and swimming pool.

Parcel Size: 0.827 acres (36,039 square feet)

Surrounding Land

	<u>Surrounding Uses:</u>	<u>Use Plan Designation:</u>
North:	Single Family Residential	Residential 1 DU/AC
South:	Single Family Residential	Residential 1 DU/AC
East:	Single Family Residential	Residential 1 DU/AC
West:	Vacant, Nursery	Residential 1 DU/AC

Surrounding Zoning:

North:	AG, Agricultural District
South:	AG, Agricultural District
East:	AG, Agricultural District
West:	AG, Agricultural District

ZONING HISTORY

Related Zoning History: None.

Previous Request on same property: Town Council approved plat application P 12-1-88, "Paradise Pines Plat", on June 7, 1989.

APPLICATION DETAILS

The applicant requested an administrative non-use special permit pursuant to Land Development Code Section 12-308(B) to reduce the required rear yard setback in the AG, Agricultural District from 40 to 36 feet in order to construct a single family dwelling of approximately 3,400 square feet in size with an attached 3 car garage and swimming pool. Staff published a notice of intent to approve an administrative non-use special permit for this request, as the Code permits administrative approval of requests to reduce a required setback by no more than 10 percent of the Code requirement. However, Land Development Code Section 12-308(B)(7) requires that such a request be processed as a special permit application when staff receives letters of objection from noticed property owners.

Applicable Codes and Ordinances

1. Section 12-81A of the Land Development Code, which requires a minimum rear yard setback of 40 feet within the AG, Agricultural District.
2. Section 12-308(B) of the Land Development Code, Administrative Non-Use Special Permits, which allows for administrative approvals of minor deviations from the provisions of the Code.
3. Section 12-308(B)(7) of the Land Development Code, Administrative Non-Use Special Permits, states that if objections are received after notice of intent to approve an administrative non-use special permit is published, the application must be processed as a standard special permit at no additional cost to the applicant.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. This area includes the westernmost section of the Town north of Orange Drive and south of SW 14 Street, and bound on the west by Interstate 75 and on the east by SW 100 Ave. The predominant existing and planned land use is single family residential at a density of one dwelling per

acre.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 100.

Applicable Goals, Objectives & Policies: None.

Staff Analysis

The requested reduction of the required rear yard setback met the criteria for an administrative special non-use permit and staff published a notice of intent to approve the administrative decision on March 23, 2001. The subject site is an unusually shaped narrow lot that has more street frontage than depth. This reverse orientation creates a design challenge. However, staff has not been provided with evidence showing why the dwelling cannot be moved forward 2'8" to the 35 foot front setback. By moving the dwelling forward 2'8", the applicant would only need to request that the rear setback be reduced to 38'8". Staff recommends approval of the request subject to the applicant moving the dwelling forward 2'8" so that the reduction of the rear setback is the minimum needed at 38'8".

Findings of Fact

Review for Special Permits:

Section 12-308(A)(1)(a):

- (i) The proposed change is not contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;
 - (ii) The proposed change will not create an unrelated an incompatible use;
 - (iii) The proposed change will not adversely affect living conditions in the neighborhood or the town;
 - (iv) The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety;
 - (v) The proposed change will not adversely affect surrounding property values;
 - (vi) The proposed change will not be a deterrent to the improvement or development of other property in accord with existing regulations;
 - (vii) The proposed change will not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public.
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Staff Recommendation

Recommendation: Based upon the above and the finding of facts in the positive, staff recommends **approval**, of petition SE 5-1-01, subject to the applicant moving the dwelling forward 2'8" so that the reduction of the rear setback is the minimum needed at 38'8".

Planning & Zoning Board Recommendation

1. The Planning and Zoning Board reached a split decision on a recommendation for

approval of the applicant's request. (motion carried 2-2, May 23, 2001, Mr. Stahl and Mr. Bender dissenting)

2. The Planning and Zoning Board recommended approval subject to staff's recommendations. (motion carried 4-0, May 23, 2001)

Exhibits

1. Letters of objection
2. Survey
3. Land Use Map
4. Subject Site Map
5. Aerial

Prepared by: _____

Reviewed by: _____

GREGORY R. AND CAROL A. TAIT
12041 ASHFORD LANE
DAVIE, FLORIDA 33325

April 30, 2001

Planning and Zoning Division
Town of Davie
6591 Orange Drive
Davie, Florida 33314

RE: ASP4-2-01

MAY 2 2002

Gentlemen:

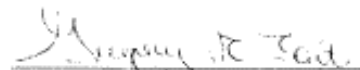
We are one of the two property owners who live immediately behind the property located at 12070 S.W. 22nd Court. This property is now before you for an Administrative Decision as to whether or not to approve a non use special permit.


We would request, as the people most impacted by your decision, that you deny this request for the following reasons:

1. We built our home in Davie in 1994 expressly because of the zoning requirements that allowed us the enjoyment of open space. We moved from Pembroke Lakes to Davie so that our house would not be "on top" of the one next door.
2. When the development behind our home was laid we could determine from the beginning that the lot immediately behind us was an irregular size for a normal building lot. The developer could have moved the entrance road further north and slightly reduced the size of lots 1, 2 and 3 to accommodate this problem. Upon inquiry, we were told by the sales people that this lot would probably become a "common area" lot for a small park or pavilion. The fact that someone now wants to utilize this lot should not come at our expense.
3. Any user of the lot can design their home to meet the legal setbacks as required. We did that when we planned our home and submitted the plans to you for approval.
4. At one point, we looked into lengthening our driveway and adding another garage to our residence. We did not submit any plans because we could not get the structure to fit within the minimum setback. If you grant the petitioner the extra four feet that he needs, would we, too, receive an extra four feet for our additional garage?
5. The swale between this lot and ours is already in place. The drainage will possibly be affected by the placement of another structure so close to our property.
6. Any adjustment to legal zoning setbacks reduces the value of the property next door. We don't feel that it is just for us to suffer a loss as a result of the development's clear lack of planning in this matter.

Thank you for the opportunity to respond. Please feel free to call either of us at (954)474-6945 we would also be willing to address the Division if you would so desire. We await your response to our request for denial.

Sincerely yours,


Gregory R. Tait


Carol A. Tait

C. Dev. Sves
for
5/1/01

May 2, 2001

Town of Davie
Barbara McDaniel, CMC
Assistant Town Clerk
6591 Orange Drive
Davie, FL 33314

Dear Ms. McDaniel:

I received a copy of your notice concerning ASP 4-2-01 and the request to reduce the minimum rear yard setback from 40 feet to 36 feet. Please note that we did not receive a copy of the notice in the mail but from a local neighbor who did.

With regards to the request, we live directly behind the property in question and object to the change. My family and I are new to the Hamlet, having moved in last summer. One of the reasons we chose our home was for the view. The prior owners mentioned that they were told that particular parcel of ground would not be built on or would be a recreational area and that fact certainly helped influence our location decision.

While we understand that it is a property owners right to seek a building code exemption within the framework of township regulations, we reject the notion that we should accept a change that negatively affects us. Clearly the request affects our view, which could have a deleterious effect on the value of our property and our ability to sell in the future.

Finally, it seems that the builder could have adjusted the entrance to the new development in a direction so that the setback issue was in effect, a non issue. I don't feel that we should pay a penalty for short sightedness, if that's appropriate, or taking advantage of space that may have been originally intended for different use.

Sincerely,



Richard Danze
12081 Ashford Lane
Davie, FL 33325
370-5933

May 22, 2001

Town of Davie
Christopher Gratz
6591 Orange Drive
Davie, FL 33314

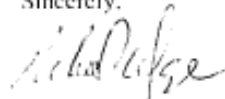
REGARDING: ASP4-2-01

Dear Christopher:

Thank you for spending time discussing our available options with my wife Valerie on 5/16. Our goal is to try and find a legitimate compromise to meet the needs of the requesting party while at the same time protect our concerns with regard to views from our property. My wife has met with the requesting party and after reviewing their plan, feels comfortable that we can allow the exemption to the setback rule as long as the home constructed is a normal single story home. Obviously, we would prefer the minimum infringement of space on the setback as possible.

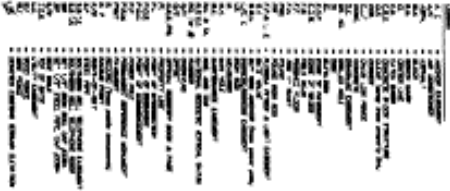
This should be considered our official position and we look forward to meeting you at the Township Meeting on the 23rd.

Sincerely,



Richard A. Danze
12081 Ashford Lane
Davie, FL 33325
954-370-5933

GRAPHIC SCALE



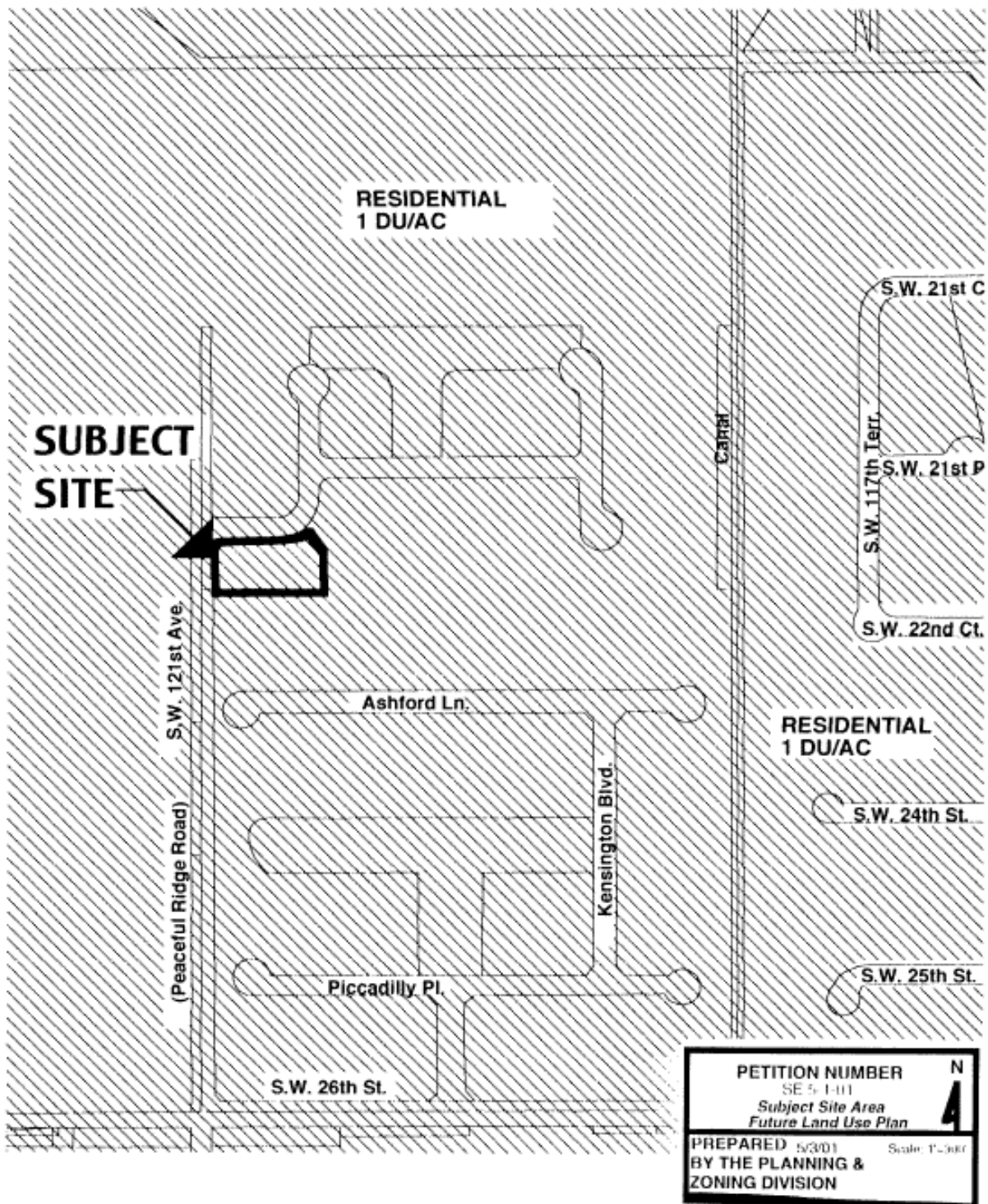
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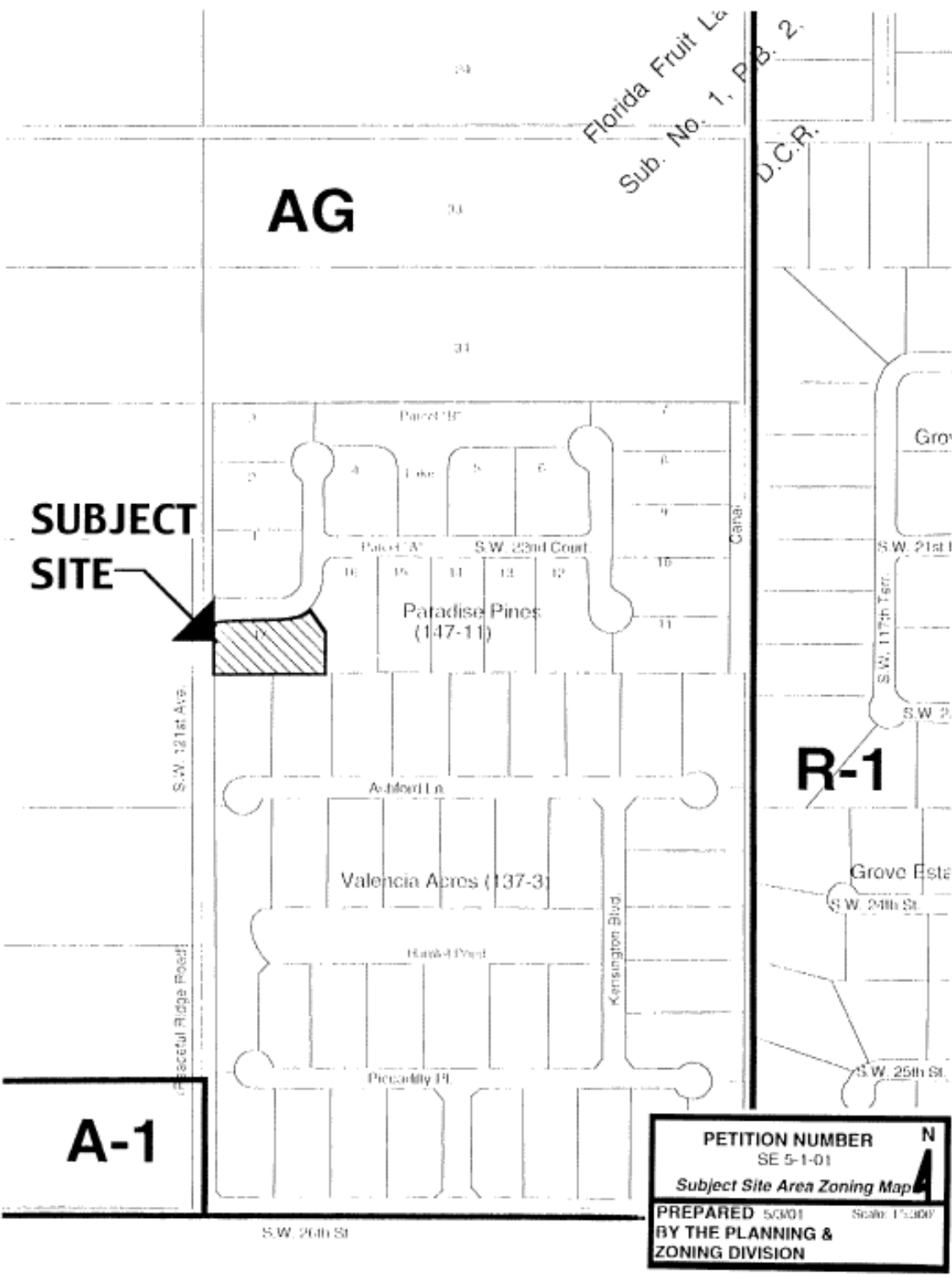
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SECONDARY
SURVEY
W/ LOCATIONS
OF EXISTING
STRAKE PLANTS

BOUNDARY SURVEY





FLAMINGO ROAD

VACANT

VACANT

**SUBJECT
SITE**

SW 21 CT.

SINGLE FAMILY
RESIDENTIAL
(UNDER CONSTRUCTION)

ASHFORD LN.

SINGLE FAMILY
RESIDENTIAL

KENSINGTON BLVD.

PICCADILLY PL.

SW 121 AVE (PEACEFUL RIDGE ROAD)

SW 26 STREET

SINGLE FAMILY
RESIDENTIAL

SINGLE FAMILY
RESIDENTIAL

N
↑
DATE FLOWN
JANUARY 1998
SCALE: NTS
SE 5-1-01